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May 16, 1996

VIA HAND DELIVERY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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OFFICE OF SECRETARY

Re: Rule Making Comments
1996 Act Local Competition Implementation
CC Docket No. 96-98

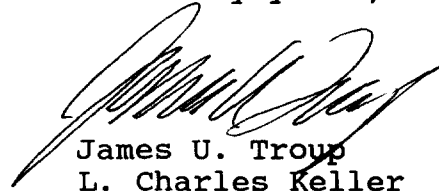
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Dear Mr. Caton:

On behalf of Bay Springs Telephone Co., Crockett Telephone Co., National Telephone Company of Alabama, Peoples Telephone Company, Roanoke Telephone Company, and West Tennessee Telephone Company, there is transmitted herewith an original and sixteen (16) copies of their comments in response to the Commission's Notice of Proposed Rule Making, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-182, released April 19, 1996. Sufficient copies are being filed so that each Commissioner may receive an individual copy.

Please direct any questions regarding this filing to undersigned counsel.

Sincerely yours,


James U. Troup
L. Charles Keller

Enclosures

cc: Ms. Janice Myles, CCB (by hand)
Int'l Transcription Svc. (by hand)

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Washington, D.C. 20554**

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In the Matter of
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CC Docket No. 96-98

**JOINT COMMENTS OF
BAY SPRINGS TELEPHONE CO., INC.; CROCKETT TELEPHONE CO.;
NATIONAL TELEPHONE COMPANY OF ALABAMA; PEOPLES TELEPHONE COMPANY;
ROANOKE TELEPHONE COMPANY; and WEST TENNESSEE TELEPHONE COMPANY**

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May 16, 1996

SUMMARY

Bay Springs Telephone Co., Crockett Telephone Co., National Telephone Company of Alabama, Peoples Telephone Company, Roanoke Telephone Company, and West Tennessee Telephone Company (the "Companies") are rural telephone companies providing local telephone service to rural portions of Tennessee, Alabama, and Mississippi. The Companies each operate fewer than 5,000 access lines and serve communities where the population is generally counted in hundreds, not thousands. The Companies' service areas therefore generally include high-cost, low-profit areas as well as some lower-cost, higher-profit areas.

Because of the rural characteristics of their service areas and their small subscriber bases, the Companies have assumed relatively high degrees of risk in making large infrastructure investments with the knowledge that these investments must be recovered over long periods of time. Any loss of subscribers would therefore have enormous deleterious effects.

If improperly implemented, Sections 251 and 252 of the 1996 Act could allow competitors to selectively pick away the Companies' low-cost, high-profit customers. This would bring the Companies' survival into question, and therefore compromise service to the more remote portions of their service areas. Reductions in rural service clearly do not serve the public interest, nor do circumstances which drive small businesses out of the telecommunications industry.

In recognition of these factors, Congress included a number of provisions in the 1996 Act to prevent the goal of competition from undermining other important public interest objectives. Foremost

among these safeguards is the rural telephone company exemption from the general obligations imposed on incumbent LECs (expanded interconnection, unbundling, and resale). Congress also allowed competitively neutral entry regulation to serve the public interest, and specified cost-based pricing. The FCC must ensure that its implementing regulations properly reflect the goals of these provisions.

The Commission should therefore establish specific, national standards for state consideration of bona fide requests to compete in rural service areas. Only with such standards can the FCC ensure a full inquiry is made into the public interest factors of Section 251(f)(1)(B) (undue economic burden, technical feasibility, and universal service considerations), and that these factors are given appropriate weight by state commissions.

The FCC's regulations implementing the rural exemption should also provide state commissions with necessary guidance in considering competitors' requests for certificates of public convenience and necessity. In many cases, competitors have requested such certification to include rural service areas without first making a bona fide request for service as required under the 1996 Act. If granted, such certificates could remove the states' jurisdiction to consider the public interest factors properly before allowing competition in a rural area.

The Commission should also provide states with guidance on how to proceed if competition is to be implemented in a rural service

area. Rates for rural providers' network elements and resale services must reflect the higher degrees of risk rural LECs assume in constructing their networks. Competitive neutrality must be maintained by reducing the regulation of a rural telephone company's local rates if competitor's rates are not regulated by the state commission. Universal service obligations and costs must be distributed equitably.

Unbundling of a rural network should not identify network elements below the loop level, nor require unbundling of the local switch beyond providing access to the switch port. In addition, the Commission's implementing regulations should not impose bill-and-keep arrangements on rural providers, even on an interim basis. The Commission should clarify that the 1996 Act is not intended as an opportunity for the RBOCs to renegotiate their agreements with adjacent rural providers. Any party wishing to receive the benefit of a rural telephone company's agreement with another competitor under Section 252(i) must take the whole agreement, and may not cherry pick individual terms.

Concrete, nationwide standards governing the states' implementation of these important provisions will ensure that Congress's public interest goals are achieved.

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**Before the
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Washington, D.C. 20554**

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Implementation of the Local
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BAY SPRINGS TELEPHONE CO., INC.; CROCKETT TELEPHONE CO.;
NATIONAL TELEPHONE COMPANY OF ALABAMA; PEOPLES TELEPHONE COMPANY;
ROANOKE TELEPHONE COMPANY; and WEST TENNESSEE TELEPHONE COMPANY**

To: The Commission

Bay Springs Telephone Co., Crockett Telephone Co., National Telephone Company of Alabama, Peoples Telephone Company, Roanoke Telephone Company, and West Tennessee Telephone Company (the "Companies"), by counsel, hereby file their joint initial comments in response to the Commission's Notice of Proposed Rulemaking in the above-referenced proceeding.^{1/}

INTRODUCTION

The Companies are rural telephone companies that have provided local telephone service in rural parts of Tennessee, Alabama, and Mississippi to customers who might not otherwise have access to telephone service. To do so, the Companies have made substantial investments in infrastructure with the knowledge that such investments could only be recovered over a long period of time. The Companies provide service to a variety of rural communities,

^{1/} In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 96-182 (released April 19, 1996) (the "Notice").

from unincorporated areas with widely-dispersed populations of only a few hundred to small towns with populations of a few thousand.

Clearly, the potential exists for the Companies to be driven out of business if competitors are allowed to utilize the Companies' network elements at rates that do not recognize the Companies' unrecovered investment in them, or to cherry pick customers in low-cost, high-profit portions of the Companies' service areas. The Companies believe that the Telecommunications Act of 1996^{2/} (the "1996 Act" or "Act") took these economic realities into consideration with the rural telephone company exemption,^{3/} the allowance for competitively-neutral state entry regulation,^{4/} the cost-based pricing requirement for network elements, interconnection, and resale,^{5/} and the provisions requiring the maintenance of universal service.^{6/} The Companies' primary concern in this proceeding is that these necessary protections be clearly reflected in the Commission's implementing regulations so that Congress's goals for increasing competition without undermining universal service or impairing the public welfare will not be thwarted. This can best be achieved by providing states with specific standards for their consideration of issues related to the 1996 Act's safeguards for rural areas.

^{2/} Pub. L. No. 104-104, 110 Stat. 56 (1996).

^{3/} 1996 Act, sec. 101, § 251(f)(1).

^{4/} 1996 Act, sec. 101, § 253(b).

^{5/} 1996 Act, sec. 101, § 252(d).

^{6/} 1996 Act, sec. 101, §§ 251(f)(1)(B), 253(b), 254; sec. 102(a).

I. Statement of Interest

The Companies are local exchange carriers operating in rural parts of Tennessee, Alabama and Mississippi.^{7/}

Bay Springs Telephone Company serves 9,658 access lines and fourteen rural communities in Mississippi. Of these communities, Bay Springs, with a population of 1,729, is the largest.^{8/}

Crockett Telephone Company serves 3,923 access lines. Crockett operates three Tennessee exchanges in Friendship (population 467), Alamo (population 2,426) and Maury City (population 782).

National Telephone Company of Alabama is located in Cherokee, Alabama. It serves 1,983 access lines and three Alabama exchanges in Cherokee (population 1,479), Margerum (population 50) and Barton (population 150).

Peoples Telephone Company operates 3,593 access lines and three exchanges in Tennessee serving Erin (population 1,586), Tennessee Ridge (population 1,271), and Henry (population 317).

Roanoke Telephone Company is located in Roanoke, Alabama, and operates 4,302 access lines and four exchanges. It serves the towns of Roanoke (population 6,362), Rockmills (population 650) and

^{7/} The source for the figures in this section is the Rand-McNally 1993 Commercial Atlas and Marketing Guide at 251-252.

^{8/} Bay Springs Telephone Company also serves Big Creek (pop. 129), Homewood (pop. 70), Louin (pop. 289), Old Taylorsville (figures unavailable), Pittman (figures unavailable), Polkville (pop. 129), Rose Hill (pop. 250), SoSo (pop. 366), Sylvarena (pop. 110), Walters (pop. 150), White Oak (figures unavailable), Mont Rose (pop. 106) and Paulding (pop. 200). It is believed that Old Taylorsville, Pittman and White Oak have populations of under one hundred persons each.

Rock Stand (population figures unavailable) in Randolph County, and Clackville (population figures unavailable) and Standing Rock (population 150) in Chambers County.

West Tennessee Telephone Company serves 4,007 access lines. West Tennessee operates four Tennessee exchanges in Bradford (population 1,154), Trezevant (population 874), Atwood (population 1,066) and Rutherford (population 1,303).

Because the Companies have so few access lines and serve such low-density rural areas, the Companies have made relatively large infrastructure investments to serve areas that would otherwise likely be unserved or under-served. To provide service in these areas, the Companies have made these investments with the knowledge that their costs must be spread over their relatively small subscriber bases and recovered over time.

If improperly implemented, the local competition provisions of the 1996 Act could allow competitors to skim the cream of the Companies' customers, reducing the Companies' revenues to such an extent that it becomes impossible for the Companies to recover their infrastructure investment. The Companies could easily be driven out of business by such a practice, leaving the more remote portions of their service areas without service, and reducing competition in the marketplace. Even if the Companies survived such abusive practices, however, the exigencies of competing under these circumstances would make service to the less attractive portions of the Companies' service areas economically infeasible. The 1996 Act acknowledges these types of economic realities, and

can be implemented in a way that protects the public interest without unduly favoring competitors.

II. The Statutory Rural Telephone Company Exemption Presents Unique Public Interest Considerations.^{9/}

Section 251(c) of the 1996 Act imposes interconnection, unbundling, resale, and collocation obligations on incumbent local exchange carriers ("LECs") to encourage competition. However, the Act specifically exempts rural telephone companies from these burdens.^{10/} This exemption can only be terminated by a state commission once another carrier has made a bona fide request for interconnection, network elements, or resale, and the state commission has determined that such interconnection would not be unduly economically burdensome, is technically feasible, and is consistent with universal service requirements.^{11/}

A competitor's request for interconnection, network elements, or resale of services, when made to a rural telephone company, presents compelling and unique public interest questions. Rural telephone companies generally serve a combination of high-cost, low-profit areas and lower-cost, higher-profit areas. Rural telephone companies are also generally much smaller than other LECs and serve far fewer access lines. They therefore have a smaller pool of subscribers over which to spread costs.

^{9/} The comments in this section provide background to an argument directed at part II.F. of the Notice.

^{10/} Id. at § 251(f)(1).

^{11/} Id. at § 251(f)(1)(B).

The combination of these factors place rural telephone companies in a particularly precarious position when a competitor requests interconnection, unbundling, or resale. A competitor has no incentive to serve the high-cost, low-profit segments of the rural service area, and will therefore probably request a suite of services or network elements designed to only reach the rural provider's higher-profit customers. Because the rural provider had a small number of subscribers to begin with, it is unlikely to be able to afford to lose any and still maintain its profitability -- particularly if the subscribers lost are in higher-profit areas. Also, a rural carrier's considerations in pricing unbundled or resold network elements are likely to include a higher level of unrecovered costs and a larger element of risk, spread over a longer period, than would other LECs'.

At the same time, rural telephone companies provide telephone service in parts of the country that would otherwise be unserved or under-served but for service by the rural telephone company. Customers in the most remote areas generally pay the same rates as customers in more populated areas because rural subscribers are not forced to bear a disproportionately larger share of infrastructure costs.^{12/}

Also, many rural telephone companies are small businesses. Congress has repeatedly emphasized the importance of maintaining

^{12/} In fact, Section 254(b)(3) of the 1996 Act mandates comparable rates for rural and urban areas.

and encouraging the participation of small businesses in the telecommunications industry.^{13/}

III. These Unique Public Interest Considerations Must Be Taken Into Account in the Commission's Regulations Implementing the 1996 Act.^{14/}

Because of the circumstances described above, the 1996 Act's interconnection, unbundling, and resale obligations create enormous potential for harm to rural telephone companies like the Companies. At the same time, the 1996 Act evinces Congress's concern that efforts to open the local exchange to competition should not simply be the death knell for the rural LEC and the end to telephone service in rural America.

Numerous provisions in the 1996 Act reveal Congress's recognition that other public interest concerns must be weighed adequately in implementing competition in rural service areas. Foremost among these is the specific exemption for rural telephone companies from the obligations visited upon "incumbent LECs," primarily expanded interconnection, unbundling, and resale.^{15/} If a rural LEC receives a "bona fide request" for interconnection, unbundling, or resale, a state must first determine whether such competition "is not unduly economically burdensome, is technically

^{13/} See, e.g., 1996 Act, sec. 101, § 257(a); sec. 707, § 714; see also 47 U.S.C. § 309(j).

^{14/} These comments are directed at part II.F., as well as part II.B., of the Notice.

^{15/} 1996 Act, sec. 101, § 251(f)(1).

feasible, and is consistent with section 254" universal service obligations.^{16/}

While state commissions are directed to protect the public interest, they must act under the shadow of Section 253(a)'s broad language. Section 253(a) states:

No State or local statute or regulation, or other State or local requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

This sweeping statement contains the seeds of innumerable arguments that the Companies are certain that large, well-funded competitors will make to shove aside the public interest bases for protecting rural telephone companies from harmful protection.

This language is qualified, however. Section 253 further provides that

Nothing in this section shall affect the ability of a state to impose, on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.^{17/}

This language comes after and explicitly qualifies the broader language of Section 253(a); it is unquestionably a limitation on it. Thus, despite the general prohibition against state regulations that act as barriers to entry, states commissions should exercise their jurisdiction to guard other values, including universal service, public safety, service quality, and consumer protection. Congress recognized that competition is not always

^{16/} Id.

^{17/} 1996 Act, sec. 101, § 253(b).

desirable in rural areas, and sometimes can do more harm than good to the public welfare.

The Section 253(b) rural telephone company exemption forms the framework for the state commissions' responsibilities to protect the public interest. Under the rural telephone company exemption, state commissions must consider the economic burdens, universal service concerns, and the technical feasibility of allowing competition in rural areas. The state commissions also must allow rural telephone companies to recover the cost of the more expensive infrastructure required to serve rural communities through the prices they charge for resale and network elements.

Taken together, these provisions reveal Congress's clear intent that the mantra of competition not lull regulators into a stupor from which other, equally valid public interest concerns cannot be given their proper weight. These provisions should act to prevent cream-skimming and other abusive practices from driving rural telephone companies out of business. Given the complexity of the underlying statute and the economic principles at issue, however, and the importance of the public interest considerations at stake, clear direction from the FCC to the states is required.

Without clear guidance from the FCC, the arguments fueled by Section 253(a) will coalesce into an enormous, wasteful, nationwide battle concerning whether state commissions have the authority to consider these important public interest considerations. This battle will pit rural telephone companies against better-capitalized entities such as BOCs and large IXCs, and will be

fought in every state, district, and territory nationwide. In many cases, the rural LECs and their customers, which Congress sought to protect in the 1996 Act, will be trampled.

The FCC must therefore provide the states with national standards for analyzing questions involving rural telephone companies. At a minimum, the FCC's regulations should contain the following provisions.

A. The Commission Should Establish Specific Standards for State Consideration of Bona Fide Requests to Compete in Rural Areas.^{18/}

The Notice inquires whether the Commission "can and should establish some standards that would assist the states in satisfying their obligations" in ruling on requests to compete in rural communities through expanded interconnection, resale, and network unbundling.^{19/} Such nationwide standards would be well within the Commission's broad authority to implement Section 251,^{20/} and, as discussed above, are critical to protecting the public interest.

Under Section 251(f)(1)(B), a state commission must analyze three factors before permitting such competition: (1) whether such competition would create an undue economic burden on the rural telephone company; (2) whether such competition is technically

^{18/} These comments are directed at part II.F. of the Notice.

^{19/} Notice at 91, para. 261.

^{20/} Under Section 251(d)(1), the Commission must "complete all actions necessary to establish regulations to implement the requirements of this section," which includes the provisions for termination of the rural exemption.

feasible; and (3) consistent with universal service goals. In its implementing regulations, the FCC should emphasize the Act's requirement that each state commission conduct a public interest inquiry and make specific findings regarding all three of these factors.

The Commission's regulations should include a rebuttable presumption that a proposal for interconnection, unbundling, or resale will place an undue economic burden on a rural telephone company in all cases where a reduction of 20 percent or more of a rural telephone company's profits would result from a loss of 10 percent or more of its market share in its service area. A presumption of undue economic burden should apply for rural telephone companies that are not currently profitable.

The Commission should require state commissions to make a specific finding of technical feasibility before allowing competition in a rural telephone company's service area. That finding must take into account the rural telephone company's existing facilities, as well as its level of capitalization and other factors relevant to its ability to construct additional facilities.

The FCC should further prohibit state commissions from authorizing competition with a rural telephone company if such competition would be reasonably likely to reduce overall levels of telephone subscribership, or require increases in local rates. Should state commissions authorize such competition, the FCC should adopt rules requiring the state commission to condition such

authority on the competitor's assumption of universal service obligations within the rural telephone company's entire study area, providing universal services to all inhabitants of the study area at a uniform price, and widely advertising the availability of the competitor's services in both the rural and more populated portions of the study area. A national policy supporting universal service obligations for competitors in rural areas is required to ensure uniform implementation of Section 253(f). The Commission should therefore direct the states to require potential competitors to qualify as eligible telecommunications carriers before authorizing competition in rural service areas.

All of these provisions are consistent with Section 253 because they are competitively neutral. Indeed, they act simply to level the playing field by preventing cream-skimming and other abusive practices by potential competitors.

B. The FCC Should Clarify That a Competitor's Request for a Certificate of Public Convenience and Necessity to Serve a Rural Telephone Company's Study Area Requires a Public Interest Analysis by the State Commission.^{21/}

The Companies are aware of numerous cases in which large telecommunications companies have instituted state proceedings for a certificate of public convenience and necessity^{22/} on a statewide basis in states in which rural telephone companies provide service. The potential competitors have argued in these

^{21/} These comments are directed at part II.F. of the Notice.

^{22/} Most states require telecommunications providers to receive authority from the state, generally termed a "certificate of public convenience and necessity" (hereafter "certificate"), before being allowed to serve consumers.

cases that they do not intend to initiate service in rural areas until later in their business plans, and therefore have requested statewide certification before making a bona fide request for interconnection or services from the affected rural telephone companies.

This practice presents an enormous gray area with significant potential for abuse. If the competitor has already received a certificate of public convenience and necessity, it is not clear that the state commission retains jurisdiction to conduct the further public interest inquiry required by the rural exemption. Presumably, the competitor could be certified to compete with the rural telephone company without any universal service responsibilities, but the state commission would no longer possess jurisdiction to conduct the public interest inquiry required by the 1996 Act.

In the Notice, the FCC proposed to establish clear guidelines for states in how the requirements of the 1996 Act should be implemented in the areas most crucial to competition.^{23/} Certainly, the same deference should be given to Congress's other public interest goals. Therefore, the Commission's implementing regulations should clarify that any state certification process which would grant a competitor any type of permission to operate in a rural telephone company's service area cannot be granted as to that service area until the state commission conducts the inquiry required by Section 251(f)(1)(B).

^{23/} Notice at 11, para. 27.

To enable the state commission to conduct such an inquiry, the FCC should mandate that states require any applicant for state certification to specify what services it requires from rural LECs in order to provide the services for which it requests certification. Such applicants should also be required prior to any grant of state certification to disclose where in a rural telephone company's study area they plan to focus their marketing efforts and the prices they intend to charge. The Commission's rules should require a competitor's rates for local services provided in rural areas to be no higher than the rates it charges in urban areas. Further, the Commission should adopt nationwide rules requiring such certification by a state commission to be conditioned upon a competitor qualifying as an eligible telecommunications carrier required to provide universal service throughout the rural telephone company's study area and obligated to widely advertise in rural areas of that study area the availability of the competitor's services.

These requirements will ensure nationwide uniformity and protect the important public interest goals promulgated with the rural exemption.

C. The Commission Should Establish National Standards Governing the Implementation of Competition in Rural Service Areas.^{24/}

^{24/} These comments are directed primarily to part II.B.2.c. of the Notice. Part II.F. is also implicated.

In consideration of the important public interest concerns affected by competition in rural areas, the Commission should adopt nationwide standards to ensure these concerns are given proper weight in instances where a state commission, after the proper inquiry, concludes a competitor should be allowed to provide service within a rural telephone company's service area pursuant to Section 251(f)(1)(B).

In approving prices for interconnection, unbundling, and resale, state commissions must be guided by "the cost ... of providing the interconnection or network element"; the price set must be nondiscriminatory, and may include a "reasonable profit."^{25/} This provision should be implemented so that it allows rural telephone companies to recover their higher costs in the event a state commission terminates the rural exemption. Computation of the infrastructure's "cost" should include an appropriate premium for the risk assumed by the rural LEC in constructing the infrastructure given the small size of its customer base and the rural characteristics of its service territory. This premium should be separate and distinct from the "reasonable profit" required by Section 252(d)(1)(B).

The Commission's implementing regulations should provide that, if a rural telephone company's exemption is terminated, each state commission must allow the rural telephone company to increase its local rates, including prices for interconnection, resale, and network elements, to offset the reduction in customers and usage

^{25/} 1996 Act, sec. 101, § 252(d)(1)(A) (emphasis added).

that is likely to result from competition, without a corresponding reduction in expenses and investment. Such a provision is the only competitively neutral approach, since competitors are unlikely to be subject to rate regulation.

With respect to unbundling requests from IXC's, the FCC is correct that the purposes of the 1996 Act would be subverted if an IXC could use unbundled network elements to avoid the payment of Part 69 access charges.^{26/} The purpose of unbundling as required by the Act is clearly to open local exchange service to competition. Where the IXC is not proposing to offer local service, an unbundling request can only be an effort to avoid access charge payments. Given the importance of these charges for the recovery of a rural telephone company's costs, such a result would fly squarely in the face of the public interest.

The FCC's regulations should also direct state commissions to ensure that prices for resold services or unbundled network elements include a proportionate share of the subscriber line charge and those portions of the carrier common line charge attributable to universal service obligations, at least where rural telephone companies are involved.^{27/} These costs are fixed and must be recovered; this concern falls disproportionately on rural telephone companies because of their smaller subscriber bases.

The FCC also must avoid adopting any "generic" pricing standard for wholesale services. As discussed above, the pricing

^{26/} Notice at 57-58, para. 164.

^{27/} See Notice at 48-49, paras. 139-141.

concerns of rural telephone companies are often dramatically different from those of other LECs. In addition, rural telephone companies often are less able to "avoid" costs than are other carriers. Because they are small businesses, the employees that work for rural LECs often serve multiple functions. As a result, the resale of certain services would often result in no cost avoidance for the rural LEC. Furthermore, the statute contemplates an individualized inquiry into the appropriateness of wholesale rates.^{28/} Any wholesale pricing standard must take rural telephone companies' unique characteristics into account.

Given rural telephone companies' small size and the benefits they provide in rural areas, the FCC also must act to ensure rural service is not compromised by forced bill-and-keep regimes. As the Commission notes in the Notice, some states have imposed interim bill-and-keep arrangements.^{29/} The Commission should prohibit such practices to the extent they force rural telephone companies to terminate other carriers' calls on their rural networks without compensation. Because rural carriers have smaller subscriber bases and higher infrastructure costs, rural carriers' termination costs are generally higher than other carriers'. Any forced bill and keep regime would therefore disproportionately affect rural telephone companies. Further, as the Commission suggests, the statute does not contemplate the imposition of bill-and-keep

^{28/} The wholesale pricing standards are part of Section 252, which speaks throughout about state commissions' action to approve individual agreements.

^{29/} Notice at 82, para. 240.

arrangements; it merely gives states authority to approve them when they are reached by negotiation or arbitration.^{30/}

The Commission also should not adopt its proposal to require unbundling below the local loop level,^{31/} at least with respect to rural telephone companies. Because of the realities of these small networks, the only feasible unbundling scheme would involve interconnection on the trunk side with an entire local loop constituting a single network element.

Similar concerns apply to the local switch. Access to the switch port should constitute a single network element. For rural telephone company switches, the cost of further unbundling the switching function would create additional work that would clearly outweigh any corresponding benefit.

The Commission should also ensure that the BOCs do not abuse the provisions of Section 251(c) to attempt to renegotiate their agreements with independent LECs, including rural telephone companies.^{32/} Given the gross disparity in market power between independent LECs and the BOCs, such an exercise would be nothing more than an opportunity for the BOCs to abuse that market power to extract further concessions from rural telephone companies. The provisions of Section 251(c) are clearly intended to provide for competition within the local exchange. Agreements between neighboring LECs are not implicated.

^{30/} Notice at 83, para 243.

^{31/} Notice at 33, para. 97.

^{32/} See Notice at 59-60, paras. 170-171.

As an additional matter, it would be grossly unjust for the FCC to require rural telephone companies to make only certain individual elements of interconnection or other agreements available to other competitors under Section 252(i), rather than enter into the entire agreement.^{33/} As the Commission points out, such agreements are bound to be "the product of compromise" containing "provisions to which a party agreed as specific consideration for some other provision."^{34/} Other competitors must take such agreements in their entirety, or not at all.

The FCC must also provide for a national standard preventing would-be competitors from purchasing residential service at wholesale rates and reselling it to another class of customers, such as business customers.^{35/} Such a practice could only harm competition in the local exchange market in the long run. Much of that harm will certainly be visited on rural telephone companies, who would be disproportionately harmed by such a practice given their higher costs. A national policy will ensure a level playing field and protect the long-term integrity of the marketplace.

CONCLUSION

Despite its emphasis on competition, the 1996 Act recognizes other important public interest goals that the FCC and the state commissions must protect. The 1996 Act intended for competition to be implemented in such a way that rural telephone companies are not

^{33/} This paragraph addresses part III.B. of the Notice.

^{34/} Notice at 94, para. 271.

^{35/} See Notice at 61-62, paras. 176-177 (part II.B.3.).